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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

	X		
	:		
Ontel Products Corporation	:		
	;		
Plaintiff	:		
	:	COMPLAINT	
v.	:	Civ. Action No. 12- ()
	:		
Amazon.com, Inc.	:	JURY TRIAL REQUESTED	
	:		
Defendant			
	;		
	X		

Plaintiff Ontel Products Corporation, a New Jersey corporation, by and through their undersigned counsel, for its Complaint against Defendant Amazon.com, Inc. ("Defendant"), states as follows:

JURISDICTION AND VENUE

- 1. The present Complaint arises under an action for trademark infringement, unfair competition and false designation of origin under 15 U.S.C. § 1051, et seq.
- 2. This Court has jurisdiction over the subject matter by virtue of 28 U.S.C. §§ 1331 and 1338.

- 3. This Court has personal jurisdiction over Defendant. In particular, Defendant is advertising its business(es) within this State, doing business in this State and commits, on an ongoing basis, acts of trademark infringement, unfair competition and false designation in this District.
 - 4. Venue lies in this District by virtue of 28 U.S.C. §1391(c).

PARTIES

- Plaintiff is a corporation organized and existing under the laws of the State of New
 Jersey with its principal place of business in Fairfield, New Jersey.
- 6. Defendant is a Delaware corporation with its principal place of business in Seattle, Washington.

PLAINTIFF'S TRADEMARK RIGHTS

- 7. Plaintiff Ontel is a leading marketer of quality, innovative consumer products. Ontel promotes and sells its products through national direct response television commercials commonly called "As Seen On TV." Ontel also markets its products at the retail level by well-known retail and wholesale outlets such as Wal-Mart, Target Stores, Bed Bath & Beyond, CVS and Walgreens. Ontel also promotes and sells its products through the Internet.
- 8. Ontel is among the most well-known, well-respected sources of many of the most popular As Seen On TV products sold in the United States including recent successes such as TURBO SNAKE, IRON GYM, SWIVEL SWEEPER and SURE CLIP, among many other products.
- 9. In 2010, CJ Products granted Ontel the exclusive license to manufacture, market, advertise and promote, sell, offer for sale and distribute PILLOW PETS plush animals.

- 10. In 2010, Ontel began to sell PILLOW PETS plush animals to its mass market customers. Ontel has sold tens of millions of PILLOW PETS plush animals.
- 11. In 2012, Ontel began to sell a PILLOW PETS product line extension called DREAM LITES. DREAM LITES products are PILLOW PETS plush animals with a night light embedded in the body that projects on to walls and ceilings ("Products").
- 12. In only a short period of time, DREAM LITES products have become an extremely successful brand extension.
- 13. Ontel is the owner of the U.S. Trademark Registration No. 4,140,271 for the mark "DREAM LITES" in International Class 28 (the "Trademark"). The Trademark application was filed on May 20, 2011. The United States Patent and Trademark Office issued the registration on May 8, 2012. The registration is in full force and effect. A true and correct copy of the Trademark registration is attached hereto as **Exhibit A**.
 - 14. The Trademark has been in use since at least as early as January 2, 2012.
- 15. Multiple competitors of the DREAM LITES product have entered the marketplace and are selling similar products.
- 16. Defendant operates a well-known and popular website at www.amazon.com (the "Website"), in which both Defendant and third party retailers list products for sale. Visitors to Defendant's Website view and purchase products, which are fulfilled by the third party retailers or directly by Amazon.
- 17. Defendant processes the sales from the website and receives a percentage of each sale made by third party retailers; Defendant then remits the balance to the third party retailers on a periodic basis.
 - 18. Ontel's DREAM LITES product is not available for sale on the Website.

- 19. Recently Plaintiff learned that Defendant had placed an advertisement on Google purporting to advertise Plaintiff's DREAM LITES products (the "Advertisement").
 - 20. The Advertisement stated "DREAM LITES at Amazon.com."
- 21. Upon clicking on the Advertisement, one is taken to a page on the Website, which purports to be a listing for DREAM LITES. A true and correct screen capture of the Website result upon clicking on the advertisement is attached hereto as **Exhibit B**.
- 22. The listings that result from clicking on the Advertisement does not contain the DREAM LITES product.
- 23. The Advertisement is not an advertisement for DREAM LITES at all; in reality it is an advertisement for Ontel's competitors' products.
- 24. A search for "DREAM LITES" on the Website also results in a listing of products that are not Ontel's DREAM LITES product. This is the same listings pages as shown in **Exhibit B**.
- 25. On March 6, 2012, counsel for Ontel sent an e-mail to Defendant informing Defendant that "DREAM LITES" is a protected trademark and Defendant was therefore infringing on the Trademark and engaging in unfair competition (the "Letter").
- 26. Plaintiff expressed concern that Defendant's use of the Trademark in the Advertisement could result in a likelihood of confusion by the public about the source, sponsorship, or affiliation of the products listed by Defendant on the Website; because the public may believe that the products contained on the Website were somehow authorized by or affiliated with Ontel's DREAM LITES product.
- 27. Defendant agreed to discontinue use of DREAM LITES in the Advertisement but not otherwise.

- 28. If a consumer now searches for "DREAM LITES" through the Google search engine, the resulting Google advertisement states "DREAM LIGHT at Amazon.com." A true and correct screen capture of the Advertisement is attached hereto as **Exhibit C**.
- 29. Upon clicking on the Advertisement, one is taken to a page on the Website, which purports to be a listing for DREAM LITES. A true and correct screen capture of the Website result upon clicking on the advertisement is attached hereto as **Exhibit B**.
- 30. The listings that result from clicking on the Advertisement does not contain the DREAM LITES product.
- 31. The Advertisement is not an advertisement for DREAM LITES at all; in reality it is an advertisement for Ontel's competitors' products.
 - 32. Ontel attempted to amicably resolve this dispute in good faith.
- 33. However, Defendant has not altered or terminated its use of the Trademark in response to the Letter other than as indicated herein.
- 34. Defendant's infringement has become willful since Defendant continues to infringe upon the Trademark after notice.
- 35. Defendant's infringement upon the Trademark has caused and will continue to cause irreparable injury and damage to Ontel unless and until enjoined by this Court. Monetary relief will not adequately compensate Ontel for all of its injuries.

COUNT I - TRADEMARK INFRINGEMENT BY DEFENDANT

- 36. Ontel adopts and realleges paragraphs 1-35 of the Complaint as if fully set forth herein.
- 37. Ontel is the owner of U.S. Trademark Registration No. 4,140,271 for the Trademark.

- 38. Defendant's use of "DREAM LITES" or "DREAM LIGHTS" in connection with competing products, is likely to cause confusion by the public about the source, sponsorship, or affiliation of the products listed and sold by Defendant on the Website
- 39. On information and belief, Defendant's use of "DREAM LITES" or "DREAM LIGHTS" for competing products has caused actual confusion.
- 40. Defendant's use of "DREAM LITES" or "DREAM LIGHTS" has caused, and will continue to cause, irreparable harm to Ontel, and unjust enrichment to Defendant.
- 41. Defendant's actions have been and continue to be in complete willful and wanton disregard for the rights of Ontel.
- 42. By way of such action, Defendant has violated the exclusive rights of Ontel, which conduct comprises trademark infringement under 15 U.S.C. § 1114. Such conduct will continue unless and until enjoined by this Court.

COUNT II - FALSE DESIGNATION OF ORIGIN, FALSE DESCRIPTION AND REPRESENTATION IN VIOLATION OF SECTION 43(A)

- 43. Ontel adopts and realleges paragraphs 1-35 of the Complaint as if fully set forth herein.
- 44. Defendant's willful and intentional activities are likely to and do create confusion among the relevant public, the trade, and the public at large; are likely to and do deceive the foregoing concerning the origin, sponsorship or approval of the goods sold by Defendant; will otherwise mislead purchasers as to the nature and origin of goods sold by Defendant; and, as a result, severely damage the image of Plaintiff as the source of its goods and as the exclusive owner of its DREAM LITES products.
- 45. By reason of the foregoing acts, Defendant has falsely designated the origin of its goods as that of Plaintiff and made false descriptions and representations as to the goods, the

ownership of the trademark rights, and the very nature and sponsorship of the goods in violation of Section 43(a) of the U.S. Trademark Act, as amended, 15 U.S.C. Sec. 1125(a).

COUNT III - UNFAIR COMPETITION BY DEFENDANT

- 46. Ontel adopts and realleges paragraphs 1-35 of the Complaint as if fully set forth herein.
- 47. Ontel is the owner of U.S. Trademark Registration No. 4,140,271 for the Trademark.
- 48. Defendant's use of "DREAM LITES" or "DREAMLIGHTS" in connection with competing products is likely to cause likelihood of confusion by the public about the source, sponsorship, or affiliation of the products listed and sold by Defendant on the Website
- 49. On information and belief, Defendant's use of "DREAM LITES" or "DREAMLIGHTS" for competing products has caused actual confusion.
- 50. Defendant's use of "DREAM LITES" or "DREAMLIGHTS" has caused, and will continue to cause, irreparable harm to Ontel, and unjust enrichment to Defendant.
- 51. Defendant's actions have been and continue to be in complete willful and wanton disregard for the rights of Ontel.
- 52. By way of such action, Defendant has violated the exclusive rights of Ontel, which conduct comprises unfair competition, namely, among other things, false designation of origin under 15 U.S.C. § 1125. Such conduct will continue unless and until enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays:

- A. For judgment to be entered by this Court in favor of Ontel and against Defendant;
- B. For entry of a preliminary and permanent injunction enjoining Defendant from using a mark confusingly similar to the Trademark.
- C. For compensatory recovery adequate to compensate Ontel for Defendant's actions, including both damage to Ontel and unjust enrichment to Defendant, and, an increase of said compensation due to the willful and wanton nature of Defendant's conduct;
- D. An assessment against Defendant of Ontel 's reasonable attorney's fees and costs of suit;
- E. For ordering corrective advertising to clarify the consumer confusion; and
- F. For such other and further relief as the Court may deem appropriate or just.

JURY DEMAND

Plaintiff demands a Jury trial on all issues to triable.

Dated:

EPSTEIN DRANGEL-LLP

By:

Jason M. Drangel (JMD 7204)

Robert L. Epstein (RÆ8941)

William C. Wright (WCW 2213)

60 East 42 Treet, Suite 2410

New York, NY 10165

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EXHIBIT A

United States of America United States Patent and Trademark Office

DREAM LITES

Reg. No. 4,140,271

ONTEL PRODUCTS CORPORATION (NEW JERSEY CORPORATION)

Registered May 8, 2012 FAIRFIELD, NJ 07004

21 LAW DRIVE

Int. Cls.: 11 and 28

FOR: ELECTRIC NIGHT LIGHTS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 1-2-2012; IN COMMERCE 1-2-2012.

PRINCIPAL REGISTER

TRADEMARK

FOR: PLUSH TOYS; PLUSH TOYS WITH BUILT IN ELECTRIC NIGHT LIGHTS, IN CLASS

28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 1-2-2012; IN COMMERCE 1-2-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-TICULAR FONT, STYLE, SIZE, OR COLOR.

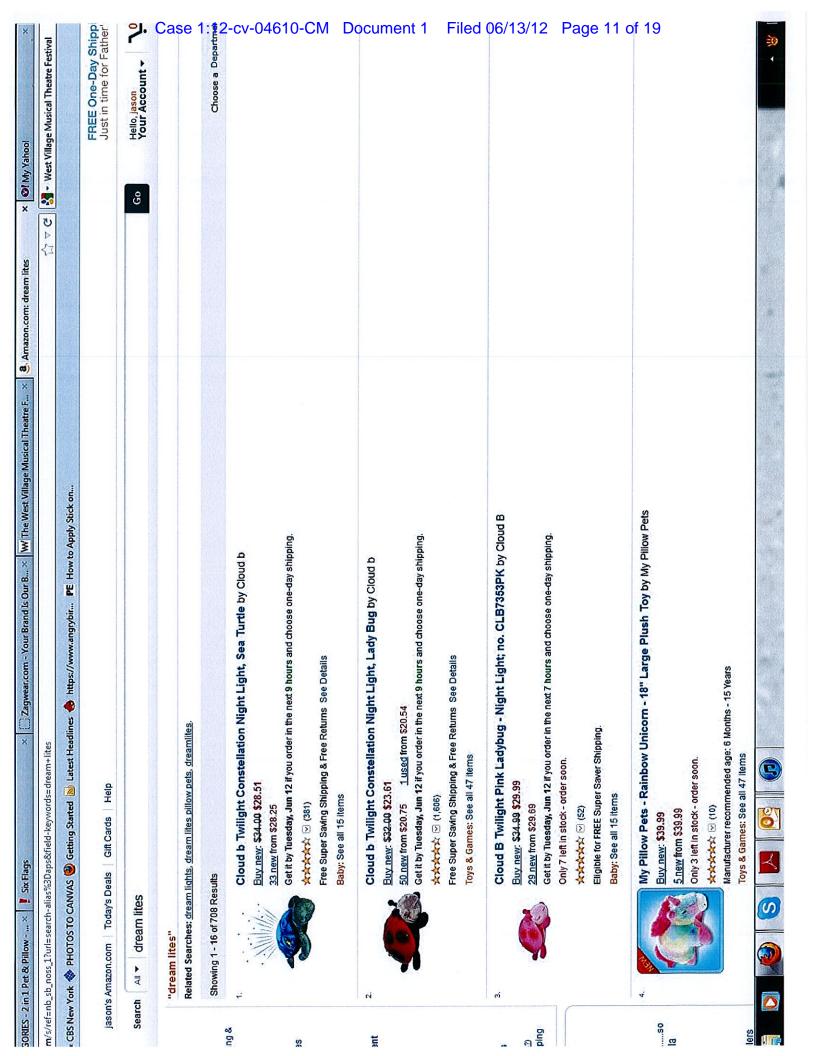
NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "LIGHTS", APART FROM THE MARK AS SHOWN.

SN 85-325,596, FILED 5-20-2011.

LEIGH LOWRY, EXAMINING ATTORNEY

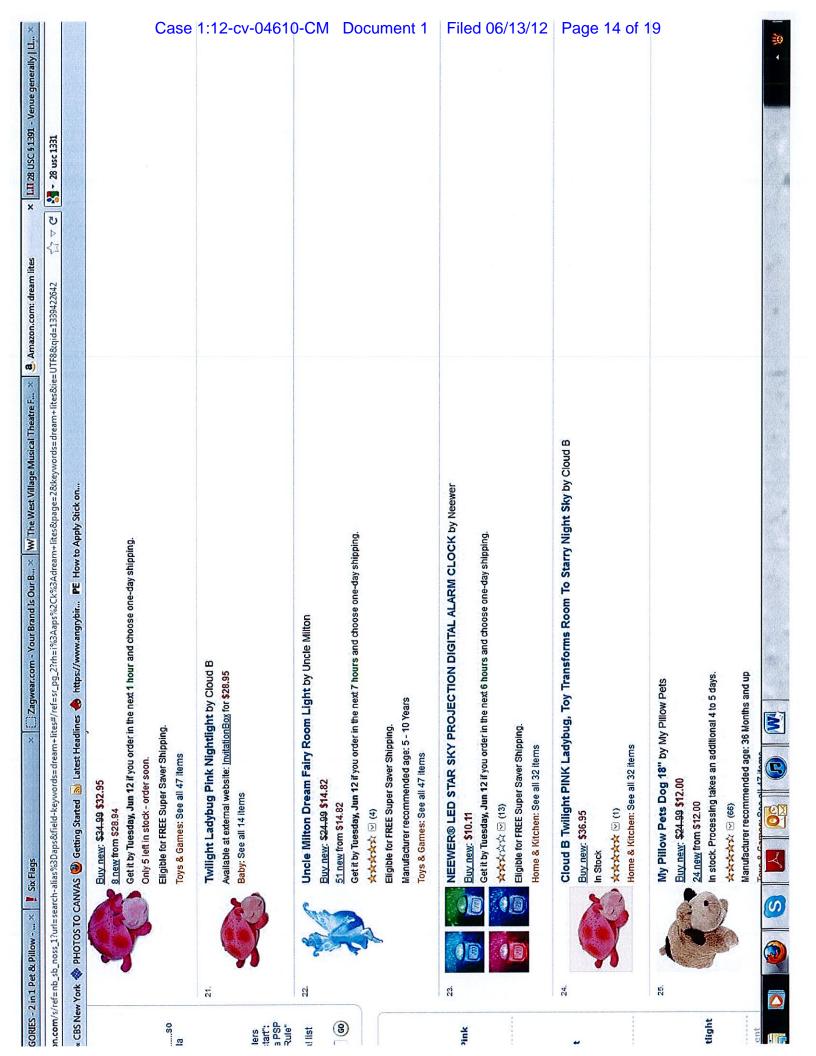


Director of the United States Patent and Trademark Office









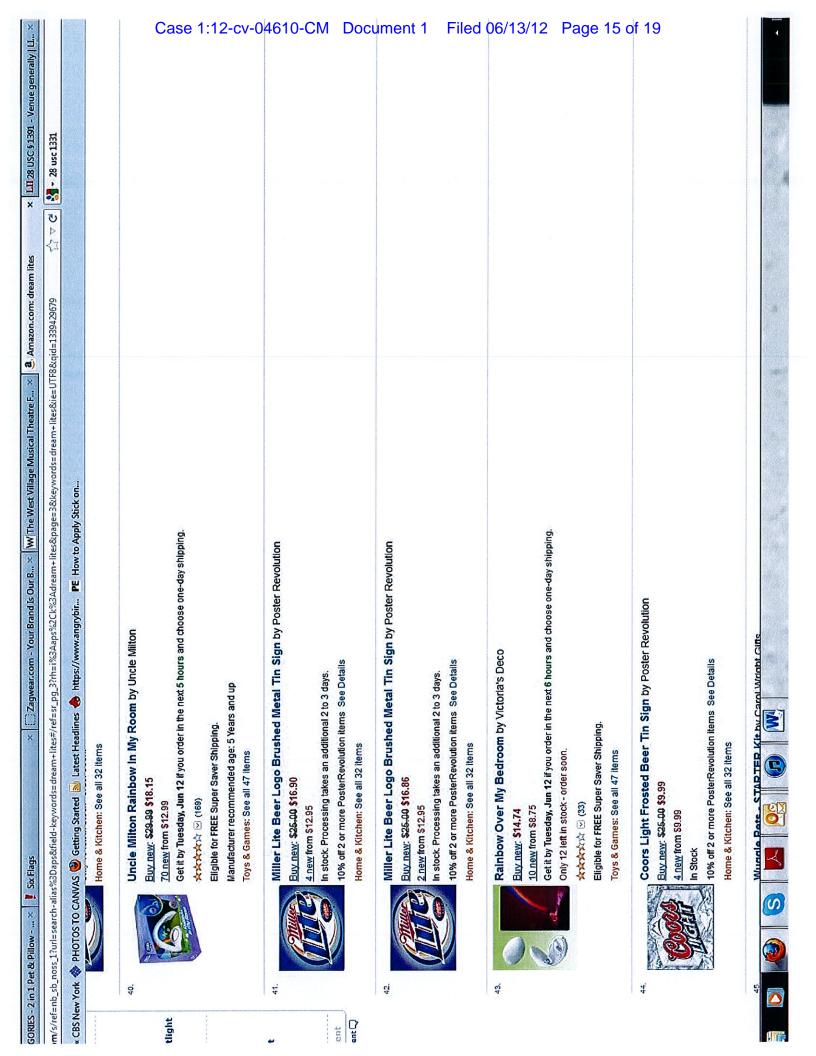




EXHIBIT C

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